

REMARKS

Applicant thanks the Examiner for the very thorough consideration given the present application.

Claims 1, 3-11, 14, and 16-18 are now present in this application. Reconsideration of this application is respectfully requested.

Rejections under 35 U.S.C. §103

Claims 1, 3-11, 14 and 16-18 stand rejected under 35 USC §103(a) as unpatentable over U.S. patent 3,133,168 to Jacobson in view of U.S. Patent 6,539,753 to Ito and further in view of U.S. Patent 2,526,539 to Carroll. This rejection is respectfully traversed.

A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

Because the rejection is based on 35 U.S.C. §103, what is in issue in such a rejection is "the invention as a whole," not just a few features of the claimed invention. Under 35 U.S.C. §103, "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *See In re O'Farrell*, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the invention must be considered as a whole and the claims must be

considered in their entirety. See Medtronic, Inc. v. Cardiac Pacemakers, Inc., 721 F.2d 1563, 1567, 220 USPQ 97, 101 (Fed. Cir. 1983).

In rejecting claims under 35 U.S.C. § 103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. F-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. In re Royka, 490 F.2d 981,

180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A showing of a suggestion, teaching, or motivation to combine the prior art references is an “essential evidentiary component of an obviousness holding.” C.R. Bard, Inc. v. M3 Sys. Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not “evidence.” See In re Dembiczak, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Moreover, it is well settled that the Office must provide objective evidence of the basis used in a prior art rejection. A factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

Furthermore, during patent examination, the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent. Only when a *prima facie* case is made, the burden shifts to the applicant to come forward to rebut such a case.

Applicant respectfully submits that this rejection is incomplete in the sense that it never (1) compares any of the three references to the claimed invention, (2) explains which aspect of Jacobsen, the base reference, is to be modified by Ito, the secondary reference, or (3) explains what

aspect of Jacobsen, the base reference, is to be modified by Carroll, the tertiary reference. All that the rejection does is conclude that “at the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Jacobsen with Ito and Carroll for the benefit of using less parts and also centering the lock (col. 3).”

Moreover, the alleged motivation to modify Jacobsen in this unexplained manner by using fewer parts is nothing more than a general statement about any combination of any references, and is not detailed and specific enough to provide proper motivation to redesign Jacobsen, which works well and shows no need of being modified.

Additionally, the Office Action fails to explain why Jacobsen, as modified, will end up with fewer parts, especially in view of the fact that absolutely no guidance is given concerning what specific parts of Jacobsen are to be modified by Ito’s direct contact of a locker and a button, and because absolutely no guidance is given concerning what specific parts of Jacobsen are to be modified by Carroll’s “protrusion at the center of each plate spring 50.”

Moreover, Applicant respectfully submits that one of ordinary skill in the art would not be properly motivated to modify Jacobsen in view of these two secondary references for a number of reasons.

Independent claim 1 recites a combination of elements in a dishwasher, comprising a cabinet, a door, a locker at the door, a coupling member, and a switch that comprises a button which is directly brought into contact with the locker when the door is closed. Similarly, independent claim 14 recites a combination of elements in a door lock assembly of a dishwasher, comprising a locker at a door opening/closing a front side of a cabinet, a coupling member, and a

switch in rear of the coupling member that comprise a button which is directly brought into contact with the locker when the door is closed. Applicant respectfully submits that these combinations of elements are not disclosed or made obvious by the applied prior art, including Jacobson and Ito.

Jacobson fails to disclose that its switch button 82 is directly brought into contact with its locker (plunger) when the door is closed, as recited. The Office Action merely discusses the fact that Jacobson has a switch button 82 and clearly admits that Jacobson does not disclose the positively recited direct contact feature of these claims.

In an attempt to remedy this deficiency, the Office Action turns to Ito, although it never states exactly how Jacobsen is to be modified by Ito.

Applicant respectfully submits that the Office Action fails to make out a *prima facie* case of proper motivation to modify Jacobson in view of Ito.

Jacobson uses an elongated plunger that moves perpendicular to the face of the door on which it is mounted. The Jacobson plunger never directly contacts a switch-actuating button. Instead, the Jacobson plunger contacts a leaf spring actuating lever, thereby moving the leaf spring actuating lever to contact a switch-actuating button. Clearly, Jacobson contains absolutely no disclosure of actuating the switch button by direct contact with the plunger.

Ito discloses a significantly different rod locking mechanism than does Jacobson. The differences between these two door-lock mechanisms are structural and functional and are significant.

For example, whereas Jacobson uses a door lock plunger that is simply pushed and pulled directly into or away from its plunger receiving structure to either lock or unlock the door, Ito uses

a door handle and claw wherein the claw pushed into its receiving structure neither locks or unlocks the door.

In order to lock Ito's door, one has to rotate the rotatable door knob 30 in direction B, as shown in Fig. 3, for example. In order to unlock Ito's door, one has to rotate the rotatable door knob 30 in a reverse of direction B, as shown in Fig. 3.

In other words, the door locking and unlocking mechanisms of Jacobson and Ito operate in fundamentally different manners. In view of this fundamental difference, the Office Action has not demonstrated why one of ordinary skill in the art would be motivated to turn to Ito to modify the significantly different structure of Jacobson that also functions so differently.

More to the point, the Office Action fails to provide objective factual evidence that one of ordinary skill in the art would radically redesign Jacobson's single axis type plunger with the rotating handle and claw arrangement of Ito for any reason, let alone to achieve direct contact of Jacobson's plunger with its on/off switch.

Additionally, whereas Jacobson has one switch 80 with actuating button 82 to turn the dishwasher on or off, Ito has two different switches 35 and 36, one of which (35) detects that the door is locked and another (36) that detects that the door is unlocked.

In view of this fundamental difference, the Office Action has not demonstrated why one of ordinary skill in the art would be motivated to turn to Ito to modify Jacobson. The Office Action also fails to provide objective factual evidence that one of ordinary skill in the art would radically redesign Jacobson's single on/off switch with the two different open/closed switches and solenoid-

operated on/off switch arrangement of Ito for any reason, let alone to achieve direct contact of Jacobson's plunger with its on/off switch.

The Office Action speculates that it would be obvious to modify Jacobson in view of Ito "for the benefit of using less parts."

Applicant respectfully disagrees for the aforementioned reasons and because Jacobson already has a mechanism for easily detecting when the door is open that does not require significantly structurally reconfiguring Jacobson, and because using the Ito door open detecting scheme would require adding detectors, which would involve additional cost, and involve more parts.

Furthermore, claims 1 and 14 positively recite a combination of features including a coupling member that comprises two separate plate springs, each in the form of a plate so as to exert an elastic force as bent and the switch comprises a button which is directly brought into contact with the locker when the door is closed. This positively recited feature is not found in either Johnson or Ito, so there is no objective factual evidence of record to modify Jacobson in view of Ito to provide this claimed feature.

The Office Action then turns to Carroll to explain that Carroll discloses fixing protrusions 42, 52) and the protrusion at the center of each plate spring (50) but never explains what how these features are used to modify Jacobsen, leaving that to speculation. It is well settled that a rejection under 35 U.S.C. §103 cannot properly be based on speculation but must be based on objective factual evidence of record. See, In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). See, also, In re GPAC Inc., 35 USPQ2d

1116 at 1123 (Fed. Cir. 1995) and Ex parte Haymond, 41 USPQ2d 1217 at 1220 (Bd. Pat. App. & Int. 1996).

Furthermore, the Office Action fails to explain what Carroll's ears 42 and spaced ribs 52, which are described in the rejection as protrusions, have to do with the claimed "two pairs of fixing protrusions" with respect to which each separate plate spring has two ends, each end being hooked to the fixing protrusion." Clearly, Carroll does not have two separate plate springs each of which has two ends wherein each end is hooked to a fixing protrusion. In fact, as pointed out above, Carroll's U-shaped spring has only two free ends, not two pairs of free ends, and neither of Carroll's free ends is hooked to anything.

Additionally, the Office Action fails to acknowledge that Carroll's door catch is U-shaped, and is "preferably formed from spring-like sheet metal from which a blank is stamped out and bent so as to form a pair of parallel flat spring arms 38 which are integral at one end by a connecting portion 40, whereby the catch 36 is substantially U-shaped in plan view." This is clearly described in col. 3, lines 6-12.

In other words, Carroll does not disclose or suggest two separate plate spring members, as claimed, but discloses a single-piece U-shaped spring member.

In view of this, Applicant respectfully submits that one would have to destroy Jacobsen's latch receiving member structure including its box frame 60, its cylindrical roller detent means 62, its compression springs 66, roller housings 68, shafts 64, and slots 70, and somehow replace this latch receiving member structure with Carroll's U-shaped element 6, which would completely block projecting element 8 from contacting actuating lever 84, thereby defeating an

essential function of Jacobson's latch mechanism, i.e., triggering/release of actuating switch 80, which is designed to be "in series with the main control circuit of the appliance so as to exercise master control over the control mechanism 24 and the water distribution system 35." (col. 3, lines 39-46).

To establish a *prima facie* case of obviousness, the Office Action must show "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *Fine*, 837 F.2d at 1074, 5 USPQ2d at 1598. There is no suggestion to combine, however, if a reference teaches away from its combination with another source. *See id.* at 1075, 5 USPQ2d at 1599. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . . [or] if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994). If when combined, the references "would produce a seemingly inoperative device," then they teach away from their combination. *In re Spinnoble*, 405 F.2d 578, 587, 160 USPQ 237, 244 (CCPA 1969); *see also In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (finding no suggestion to modify a prior art device where the modification would render the device inoperable for its intended purpose).

Because the proposed modification of Jacobson would result in a device that would not function for its intended purpose, one of ordinary skill in the art would be deterred from modifying Jacobson in view of Carroll, as suggested.

Thus, Carroll actually teaches away from modifying Jacobsen to arrive at the claimed invention.

Accordingly, the Office Action fails to make out a *prima facie* case of obviousness of the claimed invention.

Reconsideration and withdrawal of this rejection of claims 1, 3-11, 14 and 16-18 under 35 U.S.C. §103(a) is respectfully requested.

Additional Cited References

Because the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8076, in the Washington, D.C. area.

Prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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